NO. 900

In the Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

VERSUS

F. H. REILY,
Respondent.

OBJECTION TO GRANTING WRIT OF CERTIORARI

The respondent presents herewith his objection to the granting of the writ prayed for by the petition.

The Circuit Court of Appeals decided this case in favor of the respondent upon the principles stated in the case of *Johnson* v. *United States,* 283 Fed. 954, cited by the petitioner. The allottee was a non-resident in the United States and died such non-resident, leaving her sole heir, Wa-pe-com-e. Wa-pe-com-e had another allotment, and upon the death of his mother sold the property to the respondent. Wa-pe-com-e and his mother were not residents in the United States when the Act of June 21, 1906, became a law. The decision of the Circuit Court, in the opinion of the respondent, clearly decided in the Johnson case that the land, upon descending to the grantor, was alienable. The Act seems to be too plain, and the Honorable Circuit Court of Appeals so held, for any doubt as to construction. The Act

provides that all restrictions as to sale and encumbrances of all lands inherited and otherwise of all adult Kickapoo Indians who have been allotted lands in Oklahoma, are hereby removed. All restrictions as to all Shawnee, Delaware, Caddo and Wichita Indians who have heretofore been, or are now known, as Indians of said tribes affiliated with said Kickapoo Indians, now or hereafter non-residents of the United States, who have been allotted lands in Oklahoma or the Indian Territory, were removed. The non-residence of the Kickapoo Indians was not a condition precedent to make him a qualified Indian. The non-residence, however, of the other tribes named, was a necessary qualification to make his lands unrestricted. There is nothing in the Johnson case, or the Johnson record which indicates that the grantor Indians were residents or non-residents in the United States.

The Honorable Circuit Court of Appeals did not appear to take the question seriously as contended for by the petitioner. All these matters were thoroughly briefed and argued in this case, and an unanimous opinion was handed down affirming the decision of the lower court.

It is contended that there is a difference between the case of the United States v. Estill and this case, in that the trial court found that I-nesh-kin and Nah-she-po-eth were adults and residing in the Republic of Mexico on the 21st day of June, 1906, and thereafter. The record, however, of that case is not before this Court, showing that the

grantors were residents of Oklahoma at the time the deeds were executed. Hence the Circuit Court of Appeals, having both records before them, found that the facts in both cases were substantially the same. If the court who examined these records stated that the facts were substantially the same in each case, this Honorable Court, in our opinion, will arrive at the conclusion they are correct in this statement. The Government does not question the correctness of the decision in the Estill case, and as that Court says the facts are substantially the same, it would seem proper that the decision in this case should not be questioned.

The respondent suggests to the Honorable Court, since the opinion in the Johnson case, much land has been sold of the same character, improvements made thereon, and a contrary decision now would entail untold hardships upon such purchasers and unsettle their titles and dispossess them from homes they have occupied and improved for many years.

On page eight of the record an untenable suggestion is made that this is a case of great importance to the administration of the statute involved. That advice has been given by the Department of the Interior that the decision of the Circuit Court of Appeals will affect the title to land now held or formerly held by a considerable number of Indians of the various tribes mentioned in the statute and that a serious tax proposition will be involved.

The Solicitor-General has overlooked the Act passed by the Congress and approved February 17, 1933, to which we call this Honorable Court's attention. The Act of June 21, 1906, is repealed insofar as this particular provision, under which this land was purchased, is concerned. Hence this decision would not become in its nature a public question.

We contend by the repealing of this Act the Congress of the United States has recognized that all of these titles, such as the one held by respondent, were valid under this Act, and that all encumbrances placed upon the land by Indians were valid, or the necessity of repealing the Act would not have existed, nor would it have been necessary to validate encumbrances on such lands as there has been no encumbrances placed upon such lands by non-resident Kickapoo Indians.

The respondent therefore respectfully submits that the petition for a writ of certiorari should be in all things denied and the same dismissed.

Respectfully submitted,

F. H. REILY, *Respondent,*
By MARK GOODE, *His Attorney.*